

HOUSE BILL No. 1247

DIGEST OF INTRODUCED BILL

Citations Affected: IC 7.1-1-2-5; IC 7.1-2-3; IC 7.1-3.

Synopsis: Alcoholic beverage issues. Provides the following with regard to an application for a retailer's permit issued for economic development purposes (permit) that is pending before the alcohol and tobacco commission (ATC) on or after January 1, 2016: (1) Exempts the permit application from local alcoholic beverage board proceedings. (2) Prohibits the ATC from considering the permit location in granting or denying a permit except for whether: (A) a permit in a residential district would unreasonably impair the enjoyment of residents; and (B) the permit premises is a public nuisance, in the case of an application for a renewed permit. Effective January 1, 2016: (1) Provides that the ATC's review of a local alcoholic beverage board's decision is not de novo. (2) Eliminates the good moral character and repute requirement for a beer retailer. (3) Specifies that an ATC rule may not exceed the ATC's statutory authority. (4) Repeals the high and fine reputation requirement for a liquor retailer's permit. (5) Repeals a provision granting the ATC express and implied powers. (6) Repeals a provision prohibiting a person from performing an indirect act or holding an indirect interest, if the law prohibits a direct act or interest.

Effective: January 1, 2016 (retroactive).

Eberhart, Dermody

January 11, 2016, read first time and referred to Committee on Public Policy.



Second Regular Session of the 119th General Assembly (2016)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2015 Regular Session of the General Assembly.

HOUSE BILL No. 1247

A BILL FOR AN ACT to amend the Indiana Code concerning alcohol and tobacco.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 7.1-1-2-5 IS REPEALED [EFFECTIVE JANUARY
2 1, 2016 (RETROACTIVE)]. ~~Sec. 5: Direct and Indirect Prohibition. For~~
3 ~~the purposes of this title, whenever a person is prohibited from doing~~
4 ~~a certain act or holding a certain interest directly, he shall be prohibited~~
5 ~~also from doing that act or holding that interest indirectly.~~

6 SECTION 2. IC 7.1-2-3-3.5 IS ADDED TO THE INDIANA CODE
7 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE
8 JANUARY 1, 2016 (RETROACTIVE)]: **Sec. 3.5. Any rule, guideline,**
9 **standard, or policy of the commission:**

10 **(1) must be in accordance with; and**

11 **(2) may not exceed;**

12 **the commission's rulemaking or policymaking authority conferred**
13 **by law.**

14 SECTION 3. IC 7.1-2-3-4.5 IS REPEALED [EFFECTIVE
15 JANUARY 1, 2016 (RETROACTIVE)]. ~~Sec. 4.5: The commission and~~
16 ~~the chairman may exercise only those express powers enumerated in~~
17 ~~this title; however, this section does not limit the powers granted to the~~



commission by section 31 of this chapter.

SECTION 4. IC 7.1-2-3-31 IS REPEALED [EFFECTIVE JANUARY 1, 2016 (RETROACTIVE)]. ~~Sec. 31: Implied Powers: The commission and the chairman shall have, in addition to the express powers enumerated in this title; the authority to exercise all powers necessary and proper to carry out the policies of this title and to promote efficient administration by the commission.~~

SECTION 5. IC 7.1-3-4-2, AS AMENDED BY P.L.158-2013, SECTION 123, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2016 (RETROACTIVE)]: Sec. 2. (a) The commission shall not issue a beer retailer's permit, except as otherwise authorized in this title and subject to the other restrictions contained in this title, to the following persons:

(1) An alien.

(2) A person who ~~(A) is not of good moral character and of good repute in the community in which the person resides; or (B) has been convicted within ten (10) years before the date of application of:~~

~~(i) (A) a federal crime having a sentence of at least one (1) year;~~

~~(ii) (B) an Indiana Class A, Class B, or Class C felony (for a crime committed before July 1, 2014) or a Level 1, Level 2, Level 3, Level 4, or Level 5 felony (for a crime committed after June 30, 2014); or~~

~~(iii) (C) a crime in a state other than Indiana having a penalty equal to the penalty for an Indiana Class A, Class B, or Class C felony (for a crime committed before July 1, 2014) or a Level 1, Level 2, Level 3, Level 4, or Level 5 felony (for a crime committed after June 30, 2014).~~

(3) A person who does not own the premises to which the permit will be applicable, or who does not have a bona fide lease on the premises for the full period for which the permit is to be issued.

(4) A law enforcement officer or an officer who is not an elected officer of a municipal corporation, or governmental subdivision, or of this state, charged with any duty or function in the enforcement of this title.

(5) An officer or employee of a person engaged in the alcoholic beverage traffic, which person is a nonresident of this state, or is engaged in carrying on any phase of the manufacture of, traffic in, or transportation of alcoholic beverages without a permit under this title when a permit is required by this title.

(6) If the permit applicant does not hold a brewer's permit, a



person who leases from a person, or an officer or agent of that person, who holds a brewer's permit or a beer wholesaler's permit.

(7) If the permit applicant does not hold a brewer's permit, a person who is indebted to a person who holds a brewer's permit or a beer wholesaler's permit, or an officer or agent of that person, for a debt secured by a lien, mortgage, or otherwise, upon the premises for which the beer retailer's permit is to be applicable, or upon any of the property or fixtures on the premises, or used, or to be used in connection with the premises.

(8) A person whose place of business is conducted by a manager or agent, unless the manager or agent possesses the same qualifications required for the issuance of a beer retailer's permit to the person.

(9) A minor.

(10) A person non compos mentis.

(11) A person who has held a permit under this title and who has had that permit revoked within one (1) year prior to the date of application for a beer retailer's permit.

(12) A person who has made an application for a permit of any type which has been denied less than one (1) year prior to the person's application for a beer retailer's permit unless the first application was denied by reason of a procedural or technical defect.

(13) A person who is not the proprietor of a restaurant located and being operated on the premises described in the application for the beer retailer's permit, or of a hotel, or of a club, owning, or leasing the premises as a part of it. The disqualification contained in this subdivision shall not apply to the qualifications for or affect the privileges to be accorded under a beer dealer's permit or a dining car beer permit.

(b) Subsection (a)(9) does not prevent a minor from being a stockholder in a corporation.

SECTION 6. IC 7.1-3-9-10 IS REPEALED [EFFECTIVE JANUARY 1, 2016 (RETROACTIVE)]. ~~Sec. 10. High and Fine Reputation: The commission may issue a liquor retailer's permit only to a high grade club, restaurant, or hotel, which has a high and fine reputation for decency and law obedience. In no case shall a liquor retailer's permit be issued or stand unrevoked if the owner, manager, or management of the establishment is not a person of strict integrity and high repute, or if the premises have been padlocked.~~

SECTION 7. IC 7.1-3-19-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2016 (RETROACTIVE)]:



1 Sec. 11. (a) **This subsection applies only to a permit application**
 2 **granted by the commission before January 1, 2016.** The commission
 3 shall follow the recommendation of a majority of the members of a
 4 local board to grant or deny an application for a retailer's or dealer's
 5 permit of any type, unless, after the commission's review of that
 6 recommendation, the commission determines that to follow the
 7 recommendation would be:

- 8 (1) arbitrary, capricious, an abuse of discretion, or otherwise not
- 9 in accordance with the law;
- 10 (2) contrary to a constitutional right, power, privilege, or
- 11 immunity;
- 12 (3) in excess of or contrary to statutory jurisdiction, authority,
- 13 limitations, or rights;
- 14 (4) without observance of procedure required by law; or
- 15 (5) unsupported by substantial evidence.

16 Such review shall be de novo.

17 (b) **This subsection applies only to a permit application granted**
 18 **by the commission before January 1, 2016.** If the commission
 19 determines not to follow the recommendation of a local board after the
 20 commission's review of that recommendation according to the
 21 standards set forth in subsection (a), the commission shall make written
 22 findings of fact on each material issue on which the commission's
 23 determination is based.

24 (c) **This subsection applies only to a permit application that is**
 25 **pending before the commission on or after January 1, 2016. The**
 26 **commission shall follow the recommendation of a majority of the**
 27 **members of a local board to grant or deny an application for a**
 28 **retailer's or dealer's permit of any type, unless, after the**
 29 **commission's review of the recommendation, the commission**
 30 **determines that to follow the recommendation would be:**

- 31 (1) arbitrary, capricious, an abuse of discretion, or otherwise
- 32 not in accordance with the law;
- 33 (2) contrary to a constitutional right, power, privilege, or
- 34 immunity;
- 35 (3) in excess of or contrary to statutory jurisdiction, authority,
- 36 limitations, or rights;
- 37 (4) without observance of procedure required by law; or
- 38 (5) unsupported by substantial evidence.

39 **The commission shall make written findings of fact on each**
 40 **material issue on which the commission's determination is based.**

41 SECTION 8. IC 7.1-3-19-12.5 IS ADDED TO THE INDIANA
 42 CODE AS A NEW SECTION TO READ AS FOLLOWS



[EFFECTIVE JANUARY 1, 2016 (RETROACTIVE)]: Sec. 12.5. (a) This section applies only to an application for a new or renewed economic development permit that is pending before the commission on or after January 1, 2016.

(b) As used in this section, "economic development permit" means a retailer's permit authorized by the general assembly for the purpose of fostering economic development. The term refers to retailer's permits that are authorized under the following statutes:

- (1) IC 7.1-3-17.5-1.
- (2) IC 7.1-3-17.7-1.
- (3) IC 7.1-3-20-16.
- (4) IC 7.1-3-20-24.4.
- (5) IC 7.1-3-20-25.
- (6) IC 7.1-3-21-14.
- (7) IC 14-18-2-3.

(c) The commission shall issue an economic development permit without:

- (1) publication of notice under section 7 of this chapter; or
- (2) investigation before a local board.

However, if the economic development permit is a new permit located in a residential district, the commission and not the local board shall provide notice under section 14 of this chapter and conduct a hearing under section 15 of this chapter.

(d) Except as provided in subsection (e), the commission shall grant or deny an economic development permit based only upon an applicant's personal qualifications. The commission shall grant an economic development permit if the applicant satisfies all the following provisions that apply to the applicant's permit:

- (1) The applicant does not possess a special disqualification under IC 7.1-3-4-2.
- (2) The applicant satisfies the ownership and residency requirements of IC 7.1-3-21.
- (3) The applicant satisfies the eligibility requirements for the retailer's permit or permits applied for under:
 - (A) IC 7.1-3-14-3 (wine retailer's permit); or
 - (B) IC 7.1-3-9-8.
- (4) The applicant does not have a tax delinquency under IC 7.1-3-21-15.
- (5) If the application is for renewal of a permit, the permit premises has not become a public nuisance as set forth in 905 IAC 1-27-2 and 905 IAC 1-27-3.
- (6) If the application is for renewal of a permit, the applicant



has not violated any formal written commitments that the applicant entered into with a local unit under section 17 of this chapter.

(e) The desirability of the economic development permit at the geographic location or any other consideration concerning the location of the permit may not be considered in making the determination to grant or deny an economic development permit, except that if the permit is located in a residential district, the commission shall consider whether granting the permit will unreasonably impair and interfere with the peace, comfort, or enjoyment of life and property of the occupants of the residential district under section 13 of this chapter. An economic development permit is not subject to restrictions contained in the following:

(1) IC 7.1-3-21-10 and IC 7.1-3-21-11.

(2) 905 IAC 1-27-4.

(f) Any proceeding and findings to grant or deny an economic development permit shall be restricted to the commission's determination of the following:

(1) If the application is for a new economic development permit:

(A) whether the applicant possesses the qualifications set forth in subsection (d) that are applicable to the applicant's type of retailer's permit; and

(B) if the permit is located in a residential district, the considerations set forth in section 13 of this chapter.

(2) If the application is for renewal of an economic development permit, the provisions set forth in subsection (d) that are applicable to the applicant's type of retailer's permit.

(g) The commission shall make written findings of fact on each material issue on which the commission's determination to grant or deny an economic development permit is based.

SECTION 9. IC 7.1-3-19-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2016 (RETROACTIVE)]:
 Sec. 14. ~~New Permits in Residential Districts: Notice.~~ The commission shall have the duty in making the determinations provided in ~~IC 1971-7.1-3-19-13~~, **section 13 of this chapter**, to publish notice that an application for a permit is pending and that a public hearing will be held on the application at a time and place to be stated in the notice. The notice shall state that at the hearing, residents of the residential district may **do the following**:

(1) Appear and be heard in favor of, or in opposition to, the granting of the permit. ~~and may, if they desire to,~~



(2) Present a verified written remonstrance against the granting of the permit. **However, a remonstrance may not be presented to the commission in the case of an economic development permit under section 12.5 of this chapter.**

SECTION 10. IC 7.1-3-19-15 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2016 (RETROACTIVE)]:

Sec. 15. ~~New Permits in Residential Districts: Hearing.~~ (a) The commission shall consider the matters which may be brought out at the hearing and the sentiments of the residents in making the determinations required by ~~IC 1971, 7.1-3-19-13.~~ Further, **section 13 of this chapter.**

(b) **This subsection does not apply to an economic development permit under section 12.5 of this chapter.** If at the hearing, there is presented to the commission a verified written remonstrance bearing the signatures of at least fifty-one percent (51%) of the registered voters of the residential district, the commission shall be bound to find in the affirmative and to deny the application.

SECTION 11. **An emergency is declared for this act.**

